

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA, Government,	)	3:19-CR-112-K-2
VS.	)	DALLAS, TEXAS
JOHN MERVYN PRICE, Defendant.	)	January 18, 2023

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE ED KINKEADE  
UNITED STATES DISTRICT JUDGE

## A P P E A R A N C E S:

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24 transcript produced by computer.  
25

1 SENTENCING HEARING - JANUARY 18, 2023

2 P R O C E E D I N G S

3 THE COURT: Okay. Now, John Price.

4 Let me see y'all at the side of the bench for a  
5 second, Mr. Fenton, any of y'all -- all of y'all, Ms. Walters,  
6 that want to come.

7 (Bench Conference off the record)

8 THE COURT: Okay. Case of United States of America  
9 versus John Mervyn Price, Cause Number 3:19-CR-112-K.

10 Mr. Fenton and Mr. Kneller and Ms. Walters are here  
11 for the Government, and they've announced ready, correct?

12 MR. KNELLER: Correct, Your Honor.

13 THE COURT: And Mr. Finn is here and Mr. Webster, and  
14 y'all are ready?

15 (Pause)

16 THE COURT: All right.

17 MR. FINN: Testing.

18 THE COURT: Okay. Mr. Price, on June 11, 2020, you  
19 pled guilty before United States Magistrate Judge Renee Toliver  
20 to Counts One through Twenty-Two of a 23-count superseding  
21 indictment.

22 Count One, conspiracy to commit mail and wire fraud;  
23 Counts Two through Eleven, mail fraud; Count Twenty-Two, money  
24 laundering and aiding and abetting.

25 There's no plea agreement.

1 I accepted your guilty plea on June 26 of 2020.

2 And I will dismiss the original indictment as to you.

3 We have an offense level 42, criminal history  
4 category I, with a guideline range of 430 years; Counts One  
5 through Twenty-One, zero to 20 years; Count Twenty-Two, zero to  
6 ten years.

7 And y'all agree to restitution; is that correct,  
8 Mr. Finn?

9 MR. FINN: Yes, sir.

10 THE COURT: Of the \$12,427,311.61. Is that correct,  
11 sir?

12 MR. FINN: Yes, Your Honor.

13 THE COURT: And yes, sir, Mr. --

14 MR. FINN: Yes, sir.

15 THE COURT: He needs to say it.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. All right.

18 So -- and so other than that, both sides accept the  
19 findings of the Probation Department and the presentence report  
20 as the findings of the Court.

21 I've got your sentencing memorandum where the  
22 Government and the Defendant -- yours is 144 to 168 months, is  
23 what you're asking me to sentence him. And the Defendant is  
24 asking for three years of probation.

25 So I think that's where we are in this.

1           And I'm ready to hear anything you have in  
2 mitigation.

3           MR. FINN: May it please the Court, Judge, at this  
4 time I would call my client's wife, who's in the courtroom,  
5 Mrs. Price.

6           And if the Court would allow, could she take the  
7 witness stand, Your Honor?

8           THE COURT: Sure.

9           MR. FINN: Thank you.

10          THE COURT: Hi, Mrs. Price. If you'll come up here.

11          MR. FINN: Your Honor, may I?

12          THE COURT: Sure.

13          (Pause)

14          THE COURT: Mrs. Price, let me get you sworn in,  
15 okay?

16          (The witness was sworn)

17          THE COURT: Would you take a seat right here next to  
18 me?

19          And, Mrs. Price, if you'll talk right into that  
20 microphone, it will certainly be helpful.

21          THE WITNESS: Okay.

22          THE COURT: Okay. Might want to pull it up a little  
23 bit where it's -- there you go.

24          THE WITNESS: Hello? Testing.

25          THE COURT: And the chair does not move, so you have

1 to kind of move yourself up near it, okay?

2 THE WITNESS: Okay.

3 THE COURT: Thank you.

4 MR. FINN: Thank you, Judge Kinkeade.

5 MARIAN PRICE, DEFENDANT'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. FINN:

8 Q. Mrs. Price, you know the gentleman to my left, Mervyn  
9 Price, correct?

10 A. Yes.

11 Q. How long have you been married?

12 A. We've been married for almost 23 years.

13 Q. Twenty-three years?

14 A. Yes.

15 Q. And you work at Doug Rees in a civil law firm here in  
16 Dallas; is that correct?

17 A. Yes.

18 Q. And you've been a legal assistant or a paralegal for a  
19 number of years, correct?

20 A. A long number of years, yes.

21 Q. I won't ask you how many. Don't worry. I'm 59, so we're  
22 in the same ballpark.

23 You've heard -- you were in the courtroom with your  
24 husband earlier when Mr. Comu's team was presenting their case,  
25 correct?

1 A. Yes.

2 Q. Mr. Price, your husband, has no criminal -- well, Judge  
3 Kinkeade told me once that, "Finn, you are a tow truck driver  
4 with a law license," okay? So if that's true -- and I think it  
5 is true in some regards -- we've got an older model Chevrolet  
6 with a lot of miles on it, correct?

7 A. Yes.

8 Q. Is that right?

9 A. Yes.

10 Q. But absolutely, positively no criminal history, correct?

11 A. That's correct.

12 Q. What kind of man has he been during these many years of  
13 marriage?

14 Is he a -- because Judge Kinkeade hears it all, as  
15 you can imagine, you know, wife beaters to saintly people.

16 Where does Mr. Price fall in that spectrum? Because  
17 Judge Kinkeade doesn't know him.

18 A. Oh. Well, he's a wonderful man. He's -- he's always been  
19 very kind to me. He has a son and a grandson in the Cayman  
20 Islands, and he's always been very kind to them. He's done  
21 charity work, you know, at church -- church things.

22 Q. Right.

23 A. And he's just -- he's always been just a wonderful man.

24 Q. Now, Mrs. Price, you and I have known each other. In  
25 fact, Doug Rees and I were law school roommates at the

1 University of Texas School of Law down in Austin. And you and  
2 I have known each other since this case began, correct?

3 A. Yes.

4 Q. Several years?

5 A. Yes.

6 Q. And your husband pretty much fessed up and accepted  
7 responsibility immediately, correct?

8 A. Yes.

9 Q. Unlike, perhaps, Mr. Comu who was busy trying to do things  
10 while he was in custody and got caught on a recorded lie,  
11 right?

12 A. Yes.

13 Q. So where do you two live now? Because here's the thing.  
14 The Judge is talking about \$9 million, \$12 million. What kind  
15 of ritzy gazebo do you and your husband live in?

16 A. Well, we were living in a house. We owned a house, and  
17 then we couldn't keep up the payments on the house, so we had  
18 to downsize to an apartment. And now we're downsizing again,  
19 so we're paying \$1,600.00 a month in rent.

20 Q. For a one-bedroom apartment over by Love Field?

21 A. Over by Love Field, yes.

22 Q. So you and your husband are not exactly living high on the  
23 hog, as they say?

24 A. We are not.

25 Q. And has he tried to work, and he has worked while this

1 case has been pending?

2 A. He has worked at times, yes.

3 Q. Did he sell cars at some point?

4 A. He was selling cars, yes.

5 Q. And he was laid off recently, and he's looking for new  
6 employment, correct?

7 A. That's correct.

8 Q. Did -- you and your husband, Mr. Price, were married with  
9 all this Earthwater business going around.

10                   was your husband busy selling shares and dealing with  
11 investors, or was his role in the company something different?

12 A. He did not sell any of the shares himself.

13 Q. Okay. Was he in charge of making the product, marketing  
14 the product, and actually delivering a real product?

15 A. Yes. He was involved in the ZenFul.

16 Q. In the what?

17 A. In the -- he made ZenFul. He started ZenFul. He was in  
18 the -- he was out in the -- out in the plant where they made  
19 the ZenFul. He was there helping produce ZenFul.

20 Q. Okay. I don't want to confuse the Judge or myself. We've  
21 been hearing about Earthwater, but you're referring to  
22 something else called ZenFul?

23 A. Yes.

24 Q. What is ZenFul?

25 A. ZenFul is the clear drink that they were showing.

1 Q. Okay. The clear as opposed to the muddy one?

2 A. Yeah. Yeah. And it had a very good flavor. It was very  
3 tasty.

4 Q. And was your husband or the company able to sell some of  
5 that tasty stuff?

6 A. Well, Mervyn was trying to get it sold. He was trying to  
7 go to grocery stores and get it on the shelves, but Mr. Comu  
8 did not want to sell it in the stores. He wanted to sell it on  
9 Amazon, online only.

10 Q. Was Comu, based on what you know, was he kind of the  
11 wheeler-dealer mastermind of this whole thing?

12 A. Yes.

13 Q. Is he the one that made the lion's share of the money that  
14 put crooked dirty dollars -- were they lying to investors  
15 saying, "90 percent of your money is going to go into the  
16 company," when, in fact, 50 percent was going to bonuses and  
17 stuff?

18 Was it Comu making the big money, or was your  
19 husband, Mr. Price, making the big money?

20 A. No, Mr. Comu was making the big money. Mervyn was just  
21 making a salary.

22 Q. Okay. And what was that salary?

23 A. He was making \$5,000.00 a month.

24 MR. FINN: Judge, may I approach the witness?

25 THE COURT: Yes.

1 BY MR. FINN:

2 Q. Mrs. Price, without going into any detail, I'm showing you  
3 what's been marked -- this is Government's Exhibit 1B, as in  
4 boy, from their sentencing memorandum.

5 Do you recognize this? I've written on it, but do  
6 you recognize this?

7 A. Yes.

8 Q. And the amount they're attributing to your husband where  
9 it says "payment cleared" is \$679,550.00; is that correct?

10 A. Yes.

11 Q. So your husband made, according to the Government's  
12 calculations, \$679,000.00 selling his own Earthwater shares,  
13 correct?

14 A. Yes.

15 Q. And that didn't take into -- doesn't reflect that  
16 Filippo, Russell Filippo, got a 30-percent cut for those sales,  
17 right?

18 A. Right. He had -- yeah. we had to pay him out of that.

19 Q. So your husband made in this \$13 million Ponzi scheme, or  
20 whatever it was, fraud, about 4- to no more than \$500,000.00,  
21 correct?

22 A. That's correct.

23 Q. Ma'am, would you tell the Court briefly, because it's in  
24 the presentence report, what kind of physical condition your  
25 husband is in? And how old is he?

1 A. My husband is 67 years old. He suffers from diabetes. He  
2 has neuropathy. He has high blood pressure. He has bipolar  
3 disorder. He has a heart -- heart problem. He's had two --  
4 two hip replacements. And he's had -- both of his retinas have  
5 detached, and he's had them surgically repaired.

6 Q. Other than that, he's just fine, huh?

7 A. Yeah. He takes nine medications every day.

8 Q. Okay. Mrs. Price, if you don't mind me asking you, how  
9 about yourself? What kind of shape are you in medically? And  
10 I believe you indicated to me yesterday or the day before --  
11 and it's in the letter -- I dropped -- just so you know, I  
12 dropped off all three letters -- three letters from you and two  
13 from Mr. Price.

14 A. Uh-huh.

15 Q. I hand-delivered those to Judge Kinkeade yesterday just to  
16 make sure that he got those.

17 A. Yeah.

18 Q. I'm pretty sure I sent them previously, but just to make  
19 sure.

20 So you make reference in one of those letters to some  
21 seizure disorder that you have. Is it epilepsy or what?

22 A. Well, the doctors have never been able to confirm to me  
23 what I have. I suffered my first seizure in 2014, and I  
24 couldn't drive thereafter for three months to do anything. I  
25 had to be driven to work, driven to get groceries, you know.

1 That was -- I couldn't drive at all.

2 Q. Who drove you?

3 A. My husband drove me, and Mervyn's son came up from the  
4 Cayman Islands. His name is Philip. And he drove me around as  
5 well.

6 Q. And the son is the one that had the wife die --

7 A. Uh-huh.

8 Q. -- in an automobile accident?

9 A. Yes.

10 Q. Okay. Did he take that -- your husband take that  
11 particularly hard?

12 A. Yes. Oh, very hard, yes.

13 Q. Now, my son has got epilepsy, and it's controlled by  
14 medication. So do you -- but you haven't been diagnosed with  
15 epilepsy. I mean, a seizure could just come on at any point?

16 A. It could happen at any time, yes.

17 Q. And who would be your primary caregiver if that happened?

18 A. Mervyn. I have nobody else.

19 Q. It's pretty much you two against the world?

20 A. Yeah.

21 Q. And you're just hunkering down?

22 A. Yeah, we're hunkering down.

23 Q. Okay.

24 MR. FINN: Judge, that's all I have. But, Your  
25 Honor, if you have any questions -- this is a good, God-fearing

1 woman, and she'll shoot straight with you.

2 THE COURT: Any questions, Mr. Fenton?

3 MR. FENTON: No, Your Honor.

4 THE COURT: Thank you, ma'am.

5 MR. FINN: Thank you, Mrs. Price.

6 THE COURT: Appreciate it.

7 (Pause)

8 THE COURT: Okay.

9 MR. FINN: Your Honor, at this time, I call my  
10 client, Mervyn Price.

11 THE COURT: All right. Do you want to just question  
12 him from there?

13 MR. FINN: Yes, Judge.

14 Do you want to put him under oath, or no?

15 THE COURT: Yeah, if he's going to be testifying.

16 MR. FINN: Okay.

17 (The Defendant was sworn)

18 THE COURT: Okay.

19 JOHN MERVYN PRICE, DEFENDANT, SWORN

20 DIRECT EXAMINATION

21 BY MR. FINN:

22 Q. Okay. Mr. Price, you're kind of soft-spoken, and the  
23 Judge has indicated acoustics in here are not -- are not that  
24 good.

25 A. Okay.

1 Q. You had the opportunity, thanks to Judge Kinkeade and the  
2 way he scheduled this, to be in the courtroom while the  
3 co-defendant, Mr. Comu, was making his case and his argument.

4 what kind of guy was Comu really? I mean, we heard  
5 what his lawyers put on, but I think you might have a different  
6 take on Mr. Comu.

7 A. Well --

8 Q. Speak up.

9 A. I was originally employed by Mr. Comu because I had a  
10 history of operational control of the companies, fixing them  
11 up. And he had Regus Advisors, which was an advisory company,  
12 two companies, small businesses, and he needed my talent.

13 I then stayed on with Mr. Comu as an employee as he  
14 founded Earthwater, and I realized that Earthwater had a  
15 potential to it if it was handled in the correct manner,  
16 because there was already a competitor out there called BLK,  
17 Black Water, which was doing very well indeed. So we figured  
18 that there was an opportunity for that.

19 During this period, Mr. Comu was always in control.  
20 It did get fractured, and I won't go into all the details, but  
21 I rented a home from Mr. Comu. And there's all kinds of  
22 problems and issues. And in the end, the courts asked me if I  
23 would offer to buy it, and I said yes. And Mr. Comu didn't  
24 like that, because he didn't want to lose the house. And he  
25 threatened my life by basically saying that he knows people who

1 can do things to me that can do great harm.

2 THE COURT: Who owned the house that you were renting  
3 from him? How did that work?

4 THE DEFENDANT: Comu.

5 THE COURT: Okay. But he didn't like you buying it  
6 from --

7 THE DEFENDANT: No. No, Your Honor. I rented it  
8 from him when we were on good terms, and I rented out my own  
9 house in --

10 THE COURT: Why? Why didn't he just not sell it to  
11 you? I don't get the deal.

12 THE DEFENDANT: Because he wasn't ready to sell it at  
13 the time. I offered to buy it, but he said, "No, rent it and  
14 then buy. We'll discuss the rent to buy."

15 So I rented it for two years from him.

16 THE COURT: Why did he get mad? I didn't understand  
17 that.

18 THE DEFENDANT: Because he was in the middle of a  
19 \$6 million bankruptcy case.

20 THE COURT: Oh, and you were going to buy it out of  
21 bankruptcy. Oh, okay. Okay.

22 THE DEFENDANT: Correct. Yes.

23 THE COURT: You were going to buy it out from the  
24 Judge or from the bankruptcy, and he didn't want you to do  
25 that, correct?

1                   THE DEFENDANT: No. He wanted me -- he wanted me to  
2 buy it, but the bankruptcy proceedings didn't want him to sell  
3 it.

4                   THE COURT: Oh, okay.

5                   THE DEFENDANT: So -- and not only sell it, he tried  
6 to prove homestead rights by saying he was living there.

7                   THE COURT: Yeah.

8                   THE DEFENDANT: And I basically said no, he wasn't;  
9 I'm living there, and I'm offering to buy it from him.

10 BY MR. FINN:

11 Q. And did that make him angry?

12                  THE COURT: And that made him mad?

13                  THE WITNESS: Well, he lost a four and a --  
14 \$450,000.00 home, yes.

15                  THE COURT: I get it.

16 BY MR. FINN:

17 Q. Because of what you said?

18 A. Well, actually my wife. My wife was on the stand, and she  
19 just told the truth.

20                  THE COURT: Okay.

21 BY MR. FINN:

22 Q. She told the truth, and it cost him 400 grand. Comu got  
23 all hacked off.

24                  And, you know, what did you do for the company? I  
25 mean, were you out there selling shares to these investors and

1 stuff, or was your role something different? And be brief  
2 because the Judge has heard a lot about this.

3 A. Okay. I was very concerned about the viability of the  
4 product, because it was originally packaged in milk bottles and  
5 sent out as a kind of sample just for people to look at to  
6 solicit capital. And to be honest, I was one of those four  
7 soliciting capital, Judge.

8 I realized that there was a product here. I spoke to  
9 Dr. Norbert Chirase and realized that he was providing the  
10 fulvic acid and the humic acid to the competitor, and they were  
11 doing very well.

12 Q. And just -- let me stop you. That's Dr. Chirase that  
13 testified --

14 A. That's right.

15 Q. -- an hour ago in front of Judge Kinkeade?

16 You knew that guy?

17 A. Very well indeed. I dealt with him almost on a daily  
18 basis.

19 Q. Who else at Earthwater was doing these -- you know,  
20 manufacturing? Because it sounds like you were the only one  
21 that was actually producing anything.

22 A. Well, I exclusively took over the responsibility for  
23 production, for marketing, for sales, and for getting it onto  
24 shelves. I got it on to Sprouts, Central Market. I was  
25 working Costco. That's -- the white one was for Costco. So I

1 was making progress.

2                   And as I was making progress, the efforts I was  
3 making, C.J. was elevating and lying about them, saying that we  
4 were -- we were already selling to Costco, that we already sold  
5 our first million bottle.

6 Q. So he was exaggerating to the point of deception?

7 A. Correct. Constant deception, and also deceiving the FDA  
8 and the USDA, which caused me terrible grief. I had to make  
9 amends with those and work out. What I had to do in the end  
10 was go back and re-engineer the black product and put it  
11 through a pasturization process and then get FDA and USDA  
12 approval through that process.

13 Q. Was this before or after you and Comu split?

14 A. Oh, no, no, no. This was long before.

15 Q. Okay. Because when was the split?

16 A. I'll never forget it. September the 30th, 2016.

17 Q. What was that split over?

18 A. We'd just basically fallen out. It wasn't working at all  
19 anymore. He didn't like the fact that I had got FulHum and I  
20 got a massive amount of high -- everyone was interested in a  
21 clear version of fulvic, and I was beginning to get Dr. Chirase  
22 and a number of other scientists to write papers on it that we  
23 could publish on the benefits of just fulvic. I said -- he  
24 basically -- just to be honest, he just wanted a pump and dump.

25 Q. Okay. So it's a pump and dump.

1 A. Yeah.

2 Q. You immediately, when confronted, accepted responsibility.  
3 The Government will say that you weren't 100 percent honest.  
4 But you pretty much came clean. And I was there for that three  
5 years ago. Do you remember that?

6 A. Yeah. I wasn't honest because I genuinely was afraid of  
7 what Comu would do, and I needed that paycheck badly, that  
8 paycheck every month. I had 60-something years of age. I had  
9 no chance of getting another job. And I knew I could get  
10 fulvic and humic into a stable position where it would have  
11 value to sell to another company.

12 Q. I got you, Mr. Price, but let me focus you on this.

13 We've heard or the Judge has heard that when Mr. Comu  
14 was out on pretrial release he was doing some stuff he  
15 shouldn't have been doing.

16 A. Uh-huh.

17 Q. You haven't had any problems in three years since you've  
18 been released, correct? No problems, you know?

19 A. On September 30, 2016, I severed all communications with  
20 all my friends, everybody I knew, Comu, and anyone else, and I  
21 started a new life. I went to church, and I said, "what do I  
22 do?"

23 And they said, "Start all over. Pretend you're a  
24 kid. Do any job you can."

25 And I thought, well, I've never sold cars. I've

1 never been in retail.

2 I worked for \$17.00 an hour, and that's basically  
3 what I did, and I started all over. And I've had no contact  
4 with anyone since then.

5 Q. And you have sold cars for 17 bucks an hour?

6 A. No. I sold cars for commission. But in the end, if I  
7 didn't sell a car, I got 17 bucks an hour.

8 Q. Okay. But you got laid off, and now you're looking for a  
9 new job?

10 A. Yeah. Unfortunately, the interest rates have forced the  
11 car dealerships into some disarray right now, and I was laid  
12 off.

13 Q. Okay. Earlier I had your wife go over Government's  
14 Exhibit Number 1B --

15 A. Yeah.

16 Q. -- which shows -- it says investor deposits to Mervyn  
17 Price Associates LLC, bank account ending in 3847. And the  
18 figure that the Government has for payment cleared, meaning  
19 payment to your account, was \$679,000.00. Is that correct?  
20 That's what you made on --

21 A. That's --

22 Q. Hold on. Let me finish.

23 And that's the shares of your Earthwater stock  
24 that -- what's that fellow's name that sold them for you?

25 A. Russell Filippo.

1 Q. Russell Filippo. He sold your shares to the tune of 679  
2 minus his 30 percent.

3 Is that the money that you made from Earthwater? I'm  
4 not talking about your salary.

5 A. No.

6 Q. Okay. I know that was 6,000 bucks or something for --

7 A. No, it was nothing during this period.

8 Q. Okay. So this money, this 4 -- 679 minus the 30 percent,  
9 that's the money that you made from Earthwater shares of  
10 selling your own shares?

11 A. They --

12 Q. Is that right?

13 A. They were my own shares, and I confirmed that.

14 Earthwater's own counsel told me that they were my shares to  
15 sell.

16 Q. The attorney's name is?

17 A. Larry Friedman.

18 Q. Larry Friedman told you you could go ahead and sell --

19 A. He wrote up the separation agreement, and he was adamant  
20 that I could sell. I wasn't exactly trusting --

21 Q. Slow down.

22 A. -- so I contacted an attorney called Laura Holmes, who's a  
23 securities attorney. I gave her a copy of the separation  
24 agreement, and I said, "Am I qualified to be able to -- do I  
25 own these shares, and can I sell them?"

1           And she said, "well, you do own them," she said, "but  
2 you can only sell them in a certain way."

3           And I said, "will that require a broker?"

4           She said, "It will require -- you can't sell it  
5 because you're not licensed to, even though they're yours."

6           So that's why Russell Filippo came in, and I hired  
7 Russell.

8 Q. You hired Russell Filippo to sell your shares of  
9 Earthwater?

10 A. Yes.

11 Q. And he did to the tune of 679,000 minus 30 percent, more  
12 or less, right?

13 A. Yeah.

14 Q. So if the Judge is sitting up there scratching his head,  
15 going, wait a minute, \$9 million, \$12 million, and you made  
16 less than half a million, where the heck did all this investor  
17 money go?

18 A. Well, I didn't know -- when we first formed this, I was so  
19 busy trying to make product, I wasn't --

20 Q. Wait, wait, wait, wait, wait.

21 A. 50 percent went to --

22 Q. Wait, wait, wait.

23 A. Okay.

24 Q. Answer the dadgum question. Where -- based on everything  
25 that you know -- and if you don't know, fine to say, "I don't

1 know." But you've heard investors, and you've read about  
2 investors getting ripped off, and they're hacked off.

3                 where the -- and you made 4-, 5-, 600 grand off this  
4 thing selling your own shares. where the heck did the money  
5 go?

6 A. I really don't know where it all went. I really don't. I  
7 only know what I was using in the factory and what I was being  
8 paid. I had no -- I had no access to the accounting  
9 whatsoever.

10 Q. Okay. But you weren't out there shaking people down  
11 and -- well, I think the Government says you did shake a guy  
12 down who indicated that -- what --

13                 MR. FINN: Judge, may I?

14                 THE COURT: Yeah.

15                 (Discussion off the record between counsel)

16 BY MR. FINN:

17 Q. Yeah, a Mr. Caulfield. Do you remember him?

18 A. I do indeed. And I did not shake him down.

19 Q. Okay. And he's a bookie. You didn't know this, but he's  
20 also got a murder conviction. He got probation somehow.

21                 But were you out there selling shares, or was  
22 somebody else doing that to these investors?

23 A. In the case of Mr. Caulfield, Greg Palmachi, an agent of  
24 ours, sold the shares to Mr. Caulfield. Mr. Caulfield merely  
25 wanted validation that there was a product and we were making

1 something and there was a real factory. That is really where  
2 it started, because I represented the manufacturing process.

3 Q. So that's -- when you would baby-sit an investor who was  
4 concerned, that was part -- I mean, you baby-sat the high-needs  
5 investor sometime, take them out to lunch, tell him everything  
6 is going to be fine?

7 A. I showed him the factory.

8 Q. You showed him the factory?

9 A. Showed -- some investors I showed the factory. John  
10 Caulfield wouldn't come down.

11 I gave them a walk, a guided tour of the factory if  
12 they --

13 Q. Where was this factory?

14 A. Harry Hines and Northwest Highway, a building just --

15 Q. I know, yeah, Korea Town.

16 A. Just made --

17 Q. Okay. And you would actually show investors, "Hey, this  
18 is where your money is going"?

19 A. Yeah, and do videos and send the videos.

20 Q. Did Comu ever do that?

21 A. I have no idea. He was banned from the factory.

22 Q. Whoa. You banned him from the factory?

23 A. No, I didn't. The factory owner banned him.

24 Q. Why?

25 A. They just didn't get on, because Comu is making demands

1       that were impossible to do in manufacturing.

2       Q.     Okay.

3                    MR. FINN: One last thing, Your Honor.

4       BY MR. FINN:

5       Q.     On February 26th, 2018, which is a Monday, you sent  
6       yourself an email.

7                    MR. FINN: And this is Government's Exhibit Number 5,  
8       Your Honor. It's already in the record in the sentencing  
9       memorandum.

10      BY MR. FINN:

11      Q.     "20 sordid facts about Comu, Barnes, and Earthwater they  
12       will never tell you."

13      A.     Yeah.

14      Q.     Why did you -- and I'm going to ask -- I'll ask the Judge  
15       for permission to approach. I'm sure the Government won't  
16       oppose me offering this or showing it to the Judge. It's  
17       already in evidence. But you pretty much laid it out that this  
18       is a bunch of crooks, bailing wire and duct tape, and they're  
19       not to be trusted.

20                   what motivated you on February 26, 2018, to write  
21       this?

22      A.     Fear. I was wanting to blow the whistle, because I knew  
23       by then how wrong it all was and how I had been led down the  
24       path by Comu. And I was extremely resentful and angry, and I  
25       don't normally write things in anger, so I sent it to myself

1 rather than send it to anyone else.

2 Q. I mean, this is like written by the prosecution in this  
3 case. They couldn't have done -- well, maybe they could have  
4 done a better job. But this pretty much says that Comu lives a  
5 very lavish lifestyle on investor money. The company only sold  
6 \$40,000.00 worth of product in 2017. Earthwater pays for  
7 everything for Comu. Comu is --

8 MR. FINN: Judge, may I approach and hand this to  
9 you?

10 THE COURT: Yeah. what -- have y'all agreed to this  
11 exhibit?

12 MR. FENTON: Yes, Your Honor. It's a Government  
13 exhibit.

14 THE COURT: It's your exhibit, right?

15 MR. FENTON: Yes.

16 THE COURT: And it's Exhibit Number --

17 MR. FINN: 5, Judge.

18 THE COURT: All right. Great.

19 MR. FINN: From their --

20 THE COURT: Then it's already in evidence --

21 MR. FINN: Yes, sir.

22 THE COURT: -- but that certainly is admitted. okay.

23 BY MR. FINN:

24 Q. All right. Well, look, we're here because you made a  
25 bunch of mistakes that happened to be criminal mistakes. We're

1 all sinners. I'm at the head of that pack, as the Judge well  
2 knows.

3 A. Yes, sir.

4 Q. You accepted responsibility early on. We didn't fight  
5 this. We didn't file a million objections to the PSR.

6 You know, have you ever heard that old saying you  
7 can't put lipstick on a pig?

8 A. Yes, sir.

9 Q. Okay. Well, I'm not calling you a pig, but I'm calling  
10 Earthwater a pig. And at some point, Merv, you realized if you  
11 didn't go in knowing that this was smoke and mirrors and B.S.,  
12 at some point that little voice went off in your head saying,  
13 hey, something ain't right here. And instead of getting out,  
14 you kind of powered on for a little bit, right?

15 A. Correct.

16 Q. Tell the Judge -- here's the ringing question. Why didn't  
17 you listen to that little voice in the back of your head? You  
18 know, it's like me being an old guy. Before I send something  
19 on Facebook's and I -- or social media, there's that little  
20 voice saying, "David, don't push send."

21 A. Uh-huh.

22 Q. Why didn't you bail the heck out of this thing?

23 A. I was in considerably bad health at the time, and I needed  
24 the paycheck. I knew my health I was in, there was no way I  
25 could get another job. The stress of running the factory and

1 getting things -- and cleaning up behind Comu and what he was  
2 doing was just too much for me. I needed a paycheck. So what  
3 I did, I moved myself to the factory and worked from there in  
4 an office where I wasn't on a day-to-day basis with Comu.

5 Q. Now, did you on a couple, two or three occasions --

6 MR. FINN: And I know I said I was almost done, and I  
7 am, Judge.

8 BY MR. FINN:

9 Q. -- do an anonymous complaint to the SEC consistent with  
10 that email I showed to the Judge saying fraud, fraud, alert,  
11 alert? Did you do that?

12 A. To the SEC, yeah. I tried to, yes. It's very difficult  
13 to do an anonymous complaint to the SEC online, but I did my  
14 best three times.

15 Q. Why not call -- pick up the phone and call the FBI?

16 A. I didn't have the phone number, and it never occurred to  
17 me. I did actually put the parcel together and took it to the  
18 FBI building, this building, but I didn't realize there was  
19 another FBI.

20 Q. Okay.

21 A. I'm just ignorant. I don't come from here.

22 Q. Right. How old are you, again?

23 A. 67, Your Honor.

24 Q. Prior to this, Merv, how many times have you been in  
25 trouble with the law?

1 A. I have a DUI from 2002.

2 Q. You got probation?

3 A. I did. I got a year's probation.

4 Q. Been on the wagon since then or --

5 A. No, not necessarily.

6 Q. You're talking to a guy on the wagon.

7 A. Okay.

8 Q. So you're --

9 A. No, I have an occasional beer, but not very often.

10 Q. Okay. So that's not a problem?

11 A. No.

12 Q. Illegal drugs is not a problem?

13 A. No.

14 Q. You don't have a bunch of IRS people knocking your door  
15 down? You're not a fraudster or a shyster like Comu. You  
16 don't have that kind of baggage, right?

17 A. No, I don't.

18 Q. So what are you asking -- Judge Kinkeade has been around  
19 the block a time or two. He's heard it all. He's even one of  
20 the few federal judges that did criminal defense work. Don't  
21 tell anyone. So he's been around. He's seen this from the  
22 State and the Federal level.

23                   what do you want him to know about you?

24 A. I did write the Judge a letter, and there is -- and I will  
25 elaborate a little bit. Within the period from September 2016

1 to about 2019, I had a little bit of money. And some friends  
2 of mine said, "We've got a great investment. Put some money  
3 into this, and we'll buy aviation jet fuel and we'll resell  
4 it."

5 Q. Okay.

6 A. "And we'll resell it."

7 I lost \$20,000.00. My own friends ripped me off.  
8 That was a catalytic moment, because I realized I had just  
9 taken that money from my wife, my family, from me, and I  
10 realized how much the investors of Earthwater must generally  
11 feel, because it's a terrible feeling to be ripped off, to know  
12 you've been taken as a sap and as a fool.

13 And I thought I will do everything I can to make  
14 restitution to these people, because no one is making  
15 restitution to me. I did it by prayer. And I prayed for my  
16 friends, and I forgave them. No one is going to do that for  
17 me.

18 Q. But when the shoe is on the other foot, you're getting  
19 ripped off, it doesn't feel too good, right?

20 A. It certainly doesn't. It's a terrible feeling.

21 MR. FINN: I believe that's all, Your Honor.

22 THE COURT: Thanks.

23 All right. Government, questions?

24 MR. FENTON: No, Your Honor.

25 THE COURT: All right. Thank you.

1           You can have a seat, sir, both of y'all.

2           And let me hear from the Government.

3           And I'm going to say to both of you, I'm going to  
4 consider what I heard in the first case, the part that applies  
5 to this gentleman, okay?

6           MR. FINN: Thank you, Judge.

7           THE COURT: Both sides agree to that?

8           MR. FINN: Agreed.

9           MR. FENTON: Yes, Your Honor.

10          THE COURT: Okay. Thanks.

11          Mr. Fenton?

12          MR. FENTON: And we also -- just as a housekeeping  
13 point, we just want to make sure that Mr. Webster made an  
14 appearance on the record as well.

15          MR. FINN: He's here. He's in the courtroom.

16          MR. FENTON: But that's on the record? Okay.

17          THE COURT: Yes.

18          MR. FENTON: Okay. I just wanted to make sure that  
19 we get that.

20          THE COURT: You're afraid I shouldn't let him sit  
21 back there?

22          MR. FENTON: Your Honor, I think there's three points  
23 to make here. One is Mr. Price just got up here and completely  
24 misrepresented his role in the company. His position was that  
25 he had nothing to do with the promoters, nothing to do with

1 paying these people who are getting these exorbitant  
2 commissions. He just handled the -- he just handled the  
3 factory and tried to make the product. And when you look at  
4 Government's Exhibit 2 and 3, those exhibits show Mr. Price  
5 talking about preparing the private placement memorandum which  
6 made representations about how Earthwater spent the money.

7           And also in Exhibit 3 you see Mr. Price receiving the  
8 invoices from the promoters asking for the 50-percent  
9 commissions, and you show him exercising control, spending  
10 authority over the bank accounts.

11           That is completely different than what Mr. Price just  
12 said.

13           The second thing is, unlike Mr. Comu who claims to  
14 have believed in the product, Government's Exhibit 5 shows that  
15 Mr. Price didn't believe in the product and that he, in fact,  
16 knew that the product itself was a fraud.

17           And in addition to all the things that he said about  
18 Comu, the first few things that he said was, "The company only  
19 sold \$40,000.00 worth of product in 2017."

20           THE COURT: Uh-huh.

21           MR. FENTON: "The product FulHum is not alkaline. It  
22 is neutral, and it's slightly acidic and does not contain all  
23 of the minerals Comu claims it does."

24           Third, "FulHum is not made from fulvic acid alone.  
25 Its greater constituent is lignum sulphate from wood pulp."

1           And this is from an individual who just tells you  
2 that he's ignorant.

3           Fourth, "The product is the same as can be found on  
4 the floor of any coal mine, dirty water," what I believe four  
5 or five exclamation points there. That's about the product.

6           He then goes on to talk about the fact that there's  
7 all these illegal stock sales, they pay too much commission  
8 that's illegal, it's unregistered.

9           And Mr. -- Mr. Finn is correct that this, you know,  
10 basically reads like allegations from the indictment. But the  
11 point here is that Mr. Price did not believe in the product,  
12 and that's evidenced here. He knew that it was dirty water  
13 from the floor of a coal mine.

14           What's really important is that Mr. Price just told  
15 you that on September 30, 2016, he parted ways with C.J. Comu  
16 and started a new life. This email, Your Honor, was written on  
17 February 26, 2018.

18           Exhibit 1B shows that --

19           THE COURT: Your Exhibit 1B?

20           MR. FENTON: My -- Government's Exhibit 1B shows that  
21 after Mr. Price wrote this email, he sold \$183,550.00 worth of  
22 his personal shares of Earthwater stock to victims after he  
23 wrote that email.

24           That's remarkable. That tells you exactly who  
25 Mr. Price is.

1           And the fact that he gets up here today and tells you  
2 that on September 30, 2016, he turned over a new leaf in the  
3 face of that evidence tells you who he still is today.

4           The final point that I will make is the cruelty, the  
5 cruelty with which Mr. Price approached his victims.

6           You heard from Mrs. Price, you heard from Mr. Price  
7 about the medical conditions that they suffer from and how  
8 those medical conditions really have changed their lives.

9           Well, Mr. Price's victims suffered from medical  
10 conditions. And, in fact, Mr. Caulfield -- according to  
11 Mr. Price, Mr. Caulfield had some huge -- all caps -- huge  
12 medical issues recently and has been reduced to almost zero  
13 financially, and he no longer works, so I can understand,  
14 Mr. Price said, why he is desperate, but I will cope with it.  
15 I will still take him out and just give him food and just feed  
16 him lies so that he doesn't go and blow the whistle. He will  
17 cope with it.

18           The words that he uses to describe the victim, huge  
19 medical issues, reduced to zero, desperate, he's going to cope,  
20 he's going to deal with it, that tells you who Mr. Price is.  
21 That is -- that is everything.

22           He took money from these people. He continued to  
23 take money from these people. He's standing here today  
24 lying -- even though he came in early, lying about the role  
25 that he played and lying about the new leaf that he turned

1 over. He has done none of those things.

2 And the fact that he continues to be dishonest about  
3 it shows that he is entitled to the sentence that the  
4 Government has asked for.

5 And whereas he may have done things that were  
6 different than Mr. Comu after Mr. Comu was arrested, he didn't  
7 go and try to orchestrate a stock deal and do things of that  
8 nature, the fact that he stood up here today and told you the  
9 lies that he told you in the face of absolute black and white  
10 documentary evidence that is not in dispute means that he  
11 should get the sentence that the Government has asked for.

12 THE COURT: Okay. Anything else, Mr. Finn?

13 MR. FINN: Your Honor, I would just add my guy is  
14 nothing like Comu. And for them to suggest that they're peas  
15 in a pod on the same -- on the same planet is frankly absurd.

16 THE COURT: Okay. Considering what I heard today,  
17 both from the first hearing and this hearing, the guidelines,  
18 the factors of 3553(a), and what I've heard today, and the  
19 argument by both Mr. Fenton and by Mr. Finn, it's the judgment  
20 of the Court you be sentenced to the custody of the United  
21 States Bureau of Prisons for a term of 72 months.

22 I don't know if you have any time credit service, but  
23 I'll give you that.

24 That's on -- and this is on all counts, to run  
25 concurrently.

1           You'll need to pay the restitution of \$12,427,311.61.

2           And you'll need to be on supervised release for a  
3 period of three years.

4           You'll have to pay \$2,200.00 in special assessment,  
5 which is required by law.

6           Your restitution will be paid jointly and severally  
7 with Mr. Comu, Barnes -- Mr. Barnes, Kadish, Green, Gagnier,  
8 Duchinsky, Duplain, Filippo, and Mr. Rothman, payable to the  
9 United States District Clerk, 1100 Commerce Street, Room 1452,  
10 Dallas 75242.

11          Payable immediately, and any unpaid balance shall be  
12 payable during incarceration.

13          Anything will be disbursed to the victims on the  
14 attached list, which you've acknowledged.

15          If upon commencement of the term of supervised  
16 release any part of the restitution remains unpaid, you shall  
17 make payments on the unpaid balance in monthly installments of  
18 not less than 10 percent of your gross monthly income or at a  
19 rate of not less than \$50.00 a month, whichever is greater.

20          Payment shall begin no later than 60 days after  
21 you're released from confinement and shall continue each month  
22 thereafter until the balance is paid in full.

23          And at least 50 percent of the receipts from gifts,  
24 tax refunds, inheritances, bonuses, lawsuit awards, any other  
25 receipt of money shall be paid toward the unpaid balance within

1 15 days of receipt.

2 Shall not affect the ability of the United States to  
3 immediately collect payment in full through garnishment,  
4 Treasury Offset Program, Inmate Financial Responsibility  
5 Program, the Federal Debt Collection Procedures Act of 1990,  
6 any other means available under federal or state law.

7 I'm waiving any interest.

8 I'm not ordering a fine. I would rather you pay some  
9 of this back.

10 And the terms of supervision set forth in  
11 Miscellaneous Order 64 and outlined in Part G of the  
12 presentence report will apply to you except as I have modified  
13 by the facts and the addendum and any facts found by the Court  
14 during this sentencing hearing. And you shall comply with  
15 these conditions during the term of supervision.

16 I'm recommending Seagoville.

17 I am -- I will put in the record that one of the --  
18 and you'll need to report on or before March 1, 2023, before  
19 2:00.

20 If that date -- if there's a problem with that date,  
21 I'll work -- we'll work with Mr. Finn to get a date.

22 I will tell you that when you sold yours and you  
23 didn't pay anything to try to pay any of these people back or  
24 make any effort to do that, that hurt. That hurt you.

25 And you were more involved, I think, than -- you

1 know, based on what the evidence shows and what the Government  
2 shows. You weren't as bad as Mr. Comu, and I didn't give you  
3 the same time he got either.

4 I think that's it.

5 Anything you want me to -- else to do, Mr. Finn?

6 MR. FINN: No, sir.

7 THE COURT: Anything from the Government?

8 MR. FENTON: No, Your Honor.

9 THE COURT: Okay. Thank y'all.

10 Y'all are all excused. Thank you.

11 SECURITY OFFICER: All rise.

12 (Hearing adjourned)

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1 I, TODD ANDERSON, United States Court Reporter for the  
2 United States District Court in and for the Northern District  
3 of Texas, Dallas Division, hereby certify that the above and  
4 foregoing contains a true and correct transcription of the  
5 proceedings in the above entitled and numbered cause.

6 WITNESS MY HAND on this 22nd day of January, 2023.  
7  
8  
9

10 /s/Todd Anderson  
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